

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS: 980152  
STATE INDIVIDUAL INCOME TAX  
For the 1993 Tax Year**

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**ISSUE**

**I. Imposition of the Indiana Individual Income Tax.**

**Authority:** Ind. Const. art. X, § 8; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; New York v. Graves, 300 U.S. 308 (1937); McKeown v. Ott, No. H 84-169, 1985 WL 11176 (N.D. Ind. Oct. 30, 1985). Richey v. Ind. Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994);

Taxpayer protests the imposition of the Indiana Individual Income Tax on the taxpayer's income.

**STATEMENT OF FACTS**

Taxpayer received a notice of Proposed Assessment from the Department for unpaid individual income taxes. In response the taxpayer drafted a self-styled "COUNTER DEMAND." Within that counter demand the taxpayer asked the department to "[p]lease exhibit the instrument(s) that I have knowingly, intentionally, and voluntarily signed obligating me to your demand, under agreement." Taxpayer Letter, Feb. 20, 1998. After giving the Department a thirty-day deadline in which to respond and apparently satisfied that the Department would not comply, the taxpayer indicated that "[a] lack of response on your part means a fault exists, creating fraud through material misrepresentation which vitiates all forms, contracts, agreements, etc., express or implied from the beginning." Id.

In taxpayer's subsequent correspondence, noting that the Department had declined the opportunity to produce documentary evidence of the taxpayer's voluntary acceptance of an obligation to pay Indiana Income Tax, the taxpayer set forth the following rhetorical question:

"Just what instrument did I sign to obligate myself to any demand that you or your department, in any way shape or form, has? Produce this instrument or state

to me any implied contract that I have knowingly, willingly, and voluntarily entered into with your corporation.” Taxpayer Letter, May 14, 2000.

A hearing was held on September 26, 2000, during which the issues raised by the taxpayer were reviewed and discussed.

## **I. Imposition of the Indiana Individual Income Tax.**

### **DISCUSSION**

The taxpayer’s protest letter and subsequent correspondence would seem to open a number of discussion possibilities. However, setting aside certain rarefied but ancillary issues, the taxpayer apparently predicates his protest on the presumption that the obligation to pay the Indiana Individual Income Tax requires the voluntary and formal acquiescence on the part of the taxpayer.

Taxpayer errs. As set forth in the Indiana Constitution, “The general assembly may levy and collect a tax upon income, for whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law.” Ind. Const. art. X, § 8. It should be presupposed that the drafters of the Indiana Constitution chose their words with care and, in the quoted section above, selected the word “levy” to describe the relationship between the state, the state’s income tax, and the state’s taxpayers. When the constitutional provision gave the general assembly the right to “levy” an income tax, it did so with the notion that the state had the right to “impose or assess by legal authority” that tax. Black’s Law Dictionary 919 (7<sup>th</sup> ed. 1999). In IC 6-3-1-3.5 et seq., the general assembly exercised its constitutional prerogative by imposing the adjusted gross income on both individuals and corporations. In doing so it defined an individual, subject to the adjusted gross income tax as “a natural born person, whether married or unmarried, adult or minor.” IC 6-3-1-9. And, although the assembly has provided for numerous exemptions to the state’s adjust gross income tax, one will search in vain for a statutory exemption covering those persons who decline to step forward and “voluntarily” submit themselves to the tax’s imposition.

The taxpayer raises a threadbare argument which has been addressed in numerous jurisdictions and under numerous circumstances. In each case the argument has been definitely rebutted. “[A]rguments about who is a ‘person’ under the tax laws, the assertion that ‘wages are not income’, and maintaining that *payment of taxes is a purely voluntary function do not comport with common sense - let alone the law.*” McKeown v. Ott, No. H 84-169, 1985 WL 11176 at \*2 (N.D. Ind. Oct. 30, 1985) (Emphasis Added). Such arguments “have been clearly and repeatedly rejected by this and every other court to review them.” Id. at \*1. As stated in Richey v. Ind. Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994), “The constitutional legitimacy of the general assembly’s decision to tax income is beyond dispute.”

The right of the individual states to impose a tax on the income of its residents was addressed by the Supreme Court in New York v. Graves, 300 U.S. 308, 312-313 (1937). In that decision Justice Stone stated “[t]hat the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicil itself affords the basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws *are inseparable from responsibility for sharing the costs of government. ‘Taxes are what we pay for civilized society.’*” (Emphasis added).

Given that taxpayer had taxable income, is an “individual” as defined by IC 6-3-1-9, was a resident of Indiana for the years at issue (IC 6-3-1-12), is a taxpayer (IC 6-3-1-15), the statutes imposing the state’s individual income tax are applicable to the taxpayer.

Taxpayer’s argument that, absent his voluntary acquiescence, he is not subject to the state’s individual income tax, does not comport with the law or with common sense.

### **FINDING**

Taxpayer’s protest is denied.